



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0495]

RIN 1625-AA00

### Safety Zone; Ohio River, Olmsted, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule and request for comments.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on a portion of the Ohio River in Olmsted, IL. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the demolition of Lock and Dam 53 involving explosives. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 1, 2021. For the purposes of enforcement, actual notice will be used from July 14, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG- 2021-0495 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2021-0495 using

the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email MST1, Andrew Lagarce, MSU Paducah, U.S. Coast Guard; telephone 270-442-1621 ext. 2120, email STL-SMB-MSUPaducah-WWM@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i><b>Federal Register</b></i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable.

It is impracticable to publish an NPRM because this safety zone must be established by July 14, 2021, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this interim rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, a 30 day delay of

the effective date would be contrary to public interest because action is needed to respond to the potential safety hazards associated with the demolition of Lock and Dam 53 involving explosives beginning July 14, 2021.

The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment in the navigable waters of the Ohio River from mile marker (MM) 961 to MM 964.6 before, during, and after the demolition of Lock and Dam 53 involving explosives. The Coast Guard is establishing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of the Rule**

This rule establishes a temporary safety zone that covers all navigable waters of the Ohio River from MM 961 to MM 964.6. This rule will be enforced every day at midday from July 14, 2021 through December 1, 2021 as necessary to facilitate safe demolition of Lock and Dam 53. Broadcast Notices to Mariners (BNM) will be issued six hours prior to the start of blasting to notify the public that the safety zone is being enforced. Vessels will be able to transit the safety zone when explosives are not being detonated. This safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the detonation of explosives for the demolition. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative during demolition operations involving explosives.

### **IV. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will only be enforced daily for a short period of time and only impact a small portion of the Ohio River. Additionally, this safety zone will only be enforced in daytime hours during the demolition operations of the Lock and Dam 53. Vessels may seek permission to transit safety through the area from the COTP or a designated representative.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act

of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone for the demolition of Lock and Dam 53 involving explosives on the Ohio River in Olmsted, IL. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will

consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2021-0495 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0495 to read as follows:

**§ 165.T08-0495 Safety Zone; Ohio River, Olmsted, IL**

(a) *Location.* The safety zone will cover all navigable waters of the Ohio River from mile marker (MM) 961 to MM 964.6.

(b) *Effective period.* This section is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 1, 2021. For the purposes of enforcement, actual notice will be used from July 14, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(c) *Enforcement period.* This section will be enforced daily at midday from July 14, 2021 through December 1, 2021, as necessary to facilitate safe demolition operations.

(d) *Regulations.* (1) In accordance with the general regulations in §165.23 of this part, entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) Vessels requiring entry into the safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the



COTP or the COTP's representative by telephone at 502-779-5422 or on VHF-FM channel 16.

(3) Persons and vessels permitted to enter the safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public when the safety zone is being enforced via a Broadcast Notices to Mariners.

Dated: July 13, 2021

A. M. Beach,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Sector Ohio Valley.

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